

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

WESLIE MARTIN,

Plaintiff,

v.

STATE OF NEVADA, *et al.*,

Defendants.

Case No. 3:21-cv-00365-ART-CSD

ORDER TO REOPEN CASE

**I. SUMMARY**

In August 2021 Plaintiff Weslie Martin (“Plaintiff”), then an inmate in the custody of the Nevada Department of Corrections (“NDOC”), initiated this lawsuit by submitting a complaint under 42 U.S.C. § 1983 and filing an application to proceed *in forma pauperis*. (ECF Nos. 1, 1-1.) After the Court dismissed the original complaint (ECF No. 5) and the first amended complaint (ECF No. 8), it screened Plaintiff’s second amended complaint (“SAC”) (ECF No. 10), allowing his First Amendment retaliation claim to proceed against Defendant Reubart. (ECF No. 13 at 11.) The Court then stayed the case and referred it to the Inmate Early Mediation Program. (*Id.* at 11–12.)

During the stay, the NDOC filed a suggestion of death on the docket, informing the Court that Plaintiff passed away on September 11, 2023. (ECF No. 15.) The Court ordered that any motion for substitution be filed within 90 days and warned that the failure to do so could result in dismissal of this case. (ECF No. 18.) Following the 90-day period, on January 9, 2024, the Court had not received a motion to substitute, so it dismissed this action and closed it. (ECF No. 21.)

On October 18, 2024, Denzel Hosea Martin (“Denzel”), through counsel, filed a Motion to Set Aside Order Pursuant to Rule 60(b) and a Motion for

1 Substitution Pursuant to Rule 25(a)(1).<sup>1</sup> (ECF Nos. 26, 27.) Denzel states that he  
2 is Plaintiff's brother and the special administrator of Plaintiff's estate. (ECF No.  
3 26 at 2.) He learned about Plaintiff's death on February 15, 2024, when the Ninth  
4 Circuit served him a notice of death from another of Plaintiff's cases before this  
5 Court. (*Id.* at 3.) After learning about Plaintiff's death, it took Denzel two months  
6 to secure counsel. (*Id.*) A few months later, Denzel filed the petition in state court  
7 requesting that he be named the special administrator of Plaintiff's estate. (*Id.*)  
8 On August 1, 2024, the state court granted the petition and named Denzel as  
9 the special administrator of his brother's estate. (*Id.*) Once the appointment was  
10 finalized, Denzel started to make substitution motions in the active cases  
11 Plaintiff had before he died. (*Id.*)

12 In his motions, Denzel requests that the Court: (1) reopen the case, (2)  
13 amend the caption of the case to name him as the plaintiff, and (3) allow him to  
14 pursue the claim(s) pending in this matter. (*Id.* at 2, 7.)

## 15 **II. DISCUSSION**

16 Denzel is asking this Court to set aside its judgment dismissing this action  
17 without prejudice under Federal Rule of Civil Procedure 60(b)(1). This rule  
18 provides that a court may relieve a party or its legal representative from a final  
19 judgment, order, or proceeding for "mistake, inadvertence, surprise, or excusable  
20 neglect." Fed. R. Civ. P. 60(b)(1).

21 In *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380  
22 (1993), the Supreme Court interpreted "neglect" to encompass "both simple,  
23 faultless omissions to act and, more commonly, omissions caused by  
24 carelessness." *Id.* at 388. In assessing whether a set-side is justified by a party's  
25 excusable neglect, courts apply a four-part test: (1) the danger of prejudice to the  
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27 <sup>1</sup> These motions are identical. (ECF Nos. 26, 27.) Therefore, the Court will cite to  
28 the first motion in this order when referencing them.

1 opposing party; (2) the length of the delay and its potential impact on judicial  
2 proceedings; (3) the reason for the delay, including whether it was within the  
3 reasonable control of the movant; and (4) whether the movant acted in good faith.  
4 *Id.* at 395.

5 **A. Prejudice to the Opposing Party**

6 To be prejudicial, the “standard is whether [Defendants’] ability to pursue  
7 [their defenses] will be hindered.” *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).  
8 The delay must result in tangible harm such as loss of evidence, increased  
9 difficulties of discovery, or greater opportunity for fraud or collusion. *See TCI*  
10 *Grp. Life Ins. Plan v. Knoebber*, 244 F.3d 691, 701 (9th Cir. 2001), overruled on  
11 other grounds by *Egelhoff v. Egelhoff ex rel. Breiner*, 532 U.S. 141 (2001). The  
12 loss of a quick victory does not constitute prejudice. *Bateman v. U.S. Postal Serv.*,  
13 231 F.3d 1220, 1225 (9th Cir. 2000).

14 The Court finds that this factor weighs in favor of setting aside its prior  
15 judgment. The case was in the preservice screening stage and was going to the  
16 Inmate Early Mediation Conference. Therefore, the danger of prejudice to the  
17 opposing party is low because the opposing party had not yet been served.

18 **B. Length of Delay**

19 Next, the Court considers whether Denzel’s neglect caused significant  
20 delay and its impact on the proceedings. *Pioneer*, 507 U.S. at 395. The Court  
21 finds that this factor weighs against setting aside the judgment. The Court closed  
22 the case in January 2024. Denzel filed his motions ten months later.

23 **C. Reason of the Delay**

24 Next, the Court considers whether Denzel’s neglect caused significant  
25 delay and its impact on the proceedings. *Pioneer*, 507 U.S. at 395. When  
26 assessing the reason for the delay, the Supreme Court interprets Congress’s  
27 intent as permitting courts “to accept late filings caused by inadvertence,  
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1 mistake, or carelessness, as well as by intervening circumstances beyond the  
2 party's control." *Id.* at 388. Delays in filing resulting from "negligence and  
3 carelessness," not "deviousness or willfulness," may be considered excusable  
4 neglect. *Bateman*, 231 F.3d at 1225.

5 While there was a ten-month gap between the closing of this case and  
6 Denzel's motions, he states that he acted with the utmost speed under the  
7 circumstances. He was unaware of the dismissal of this action and did not  
8 receive notice of Plaintiff's death until February 15, 2024. (ECF No. 26 at 2, 6.)  
9 It took him two more months to find counsel. (*Id.* at 3.) And it was not until  
10 August 1, 2024, that the state court named him as the special administrator of  
11 Plaintiff's estate. (*Id.*) Therefore, even though there was a significant gap in time  
12 between the closing of this case and the present motions, the delay is  
13 understandable, and Denzel shows that he acted as quickly as possible under  
14 the circumstances. This factor weighs in favor of setting aside the prior  
15 judgment.

#### 16 **D. Bad Faith**

17 For the last factor, the Court examines whether Denzel acted in bad faith  
18 when he failed to respond to the Court's orders and meet its deadlines. There is  
19 no evidence that Denzel purposely acted in bad faith. On the contrary, he was  
20 unaware of the deadlines and appears to have acted as quickly as possible to  
21 reopen this case.

22 After considering all the *Pioneer* factors, the Court finds that they weigh in  
23 favor of reopening this case. The danger of prejudice to the opposing party is low,  
24 Denzel provided good reasons for his failure to follow the Court's order to file a  
25 motion to substitute, and, based on his explanation, he acted in good faith.  
26 Accordingly, the Court **GRANTS** his motions (ECF Nos. 26, 27) and reopens this  
27 case.  
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1 **III. CONCLUSION**

2 For the foregoing reasons, it is ordered that Denzel's Motion to Set Aside  
3 Order Pursuant to Rule 60(b) (ECF No. 26) and Motion for Substitution Pursuant  
4 to Rule 25(a)(1) (ECF No. 27) are **GRANTED**.

5 It is further ordered that the Clerk of the Court reopen this case and  
6 substitute "Denzel Hosea Martin, Special Administrator of the Estate of Weslie  
7 Hosea Martin" as the plaintiff in this matter.

8 It is further ordered that Denzel shall be allowed to pursue the claim(s)  
9 pending in this matter. This case will proceed onto the normal litigation track.

10 It is further ordered that the Clerk of the Court shall electronically **SERVE**  
11 a copy of this order and a copy of the SAC (ECF No. 10) on the Office of the  
12 Attorney General of the State of Nevada by adding the Attorney General of the  
13 State of Nevada to the docket sheet. This does not indicate acceptance of service.

14 It is further ordered that service must be perfected within ninety (90) days  
15 from the date of this order pursuant to Fed. R. Civ. P. 4(m).

16 It is further ordered that, subject to the findings of the screening order  
17 (ECF No. 13), within twenty-one (21) days of the date of entry of this order, the  
18 Attorney General's Office shall file a notice advising the Court and Denzel of: (a)  
19 the names of the Defendant(s) for whom it accepts service; (b) the names of the  
20 Defendant(s) for whom it does not accept service, and (c) the names of the  
21 Defendant(s) for whom it is filing the last-known-address information under seal.  
22 As to any of the named Defendant(s) for whom the Attorney General's Office  
23 cannot accept service, the Office shall file, under seal, but shall not serve Denzel  
24 the last known address(es) of those Defendant(s) for whom it has such  
25 information. If the last known address of the Defendant(s) is a post office box,  
26 the Attorney General's Office shall attempt to obtain and provide the last known  
27 physical address(es).  
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1 If service cannot be accepted for any of the named Defendant(s), Denzel  
2 shall file a motion identifying the unserved Defendant(s), requesting issuance of  
3 a summons, and specifying a full name and address for the Defendant(s). For  
4 the Defendant(s) as to which the Attorney General has not provided last-known-  
5 address information, Denzel shall provide the full name and address for the  
6 Defendant(s).

7 It is further ordered that, if the Attorney General accepts service of process  
8 for any named Defendant(s), such Defendant(s) shall file and serve an answer or  
9 other response to the SAC (ECF No. 10) within sixty (60) days from the date of  
10 this order.

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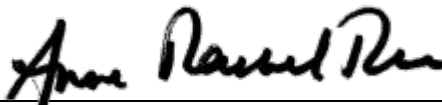
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1 It is further ordered that Denzel shall serve upon Defendant(s) or, if an  
2 appearance has been entered by counsel, upon their attorney(s), a copy of every  
3 pleading, motion or other document submitted for consideration by the Court.  
4 If Denzel electronically files a document with the Court's electronic-filing system,  
5 no certificate of service is required. Fed. R. Civ. P. 5(d)(1)(B); Nev. Loc. R. IC 4-  
6 1(b); Nev. Loc. R. 5-1. However, if Denzel mails the document to the Court, Denzel  
7 shall include with the original document submitted for filing a certificate stating  
8 the date that a true and correct copy of the document was mailed to the  
9 Defendant(s) or counsel for the Defendant(s). If counsel has entered a notice of  
10 appearance, Denzel shall direct service to the individual attorney named in the  
11 notice of appearance, at the physical or electronic address stated therein. The  
12 Court may disregard any document received by a district judge or magistrate  
13 judge which has not been filed with the Clerk, and any document received by a  
14 district judge, magistrate judge, or the Clerk which fails to include a certificate  
15 showing proper service when required.

16 DATED THIS 19th day of November 2024.

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19 ANNE R. TRAUM  
20 UNITED STATES DISTRICT JUDGE  
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